

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Section 73.202(b),)	
Table of Allotments,)	MM Docket No. 99-322
FM Broadcast Stations.)	RM-9762
(Chillicothe and Ashville, Ohio))	

**REPORT AND ORDER
(Proceeding Terminated)**

Adopted: October 16, 2002

Released: October 18, 2002

By the Assistant Chief, Audio Division:

1. The Audio Division has before it the *Notice of Proposed Rule Making* in this proceeding proposing the reallocation of Channel 227B from Chillicothe to Ashville, Ohio, and modification of the license of Station WFCB (formerly WKKJ) to specify operation on Channel 227B at Ashville.¹ North American Broadcasting Co., WLCT Radio Incorporated and Franklin Communications, Inc. ("Joint Parties") filed Joint Comments.² Secret Communications II, L.L.C. ("Secret Communications") filed Comments and Reply Comments. Thereafter, Secret Communications filed a Supplement to Comments Filed in Support of Notice of Proposed Rule Making. Franklin Communications, Inc. ("Franklin Communications") filed Comments on Supplement and Secret Communications filed a Reply to Comments on Supplement.³ For the reasons discussed below, we are reallocating Channel 227B to Ashville, Ohio, and are modifying the Station WFCB license to specify Ashville, Ohio, as its community of license.

Background

2. The Petition for Rule Making in this proceeding was filed by Secret Communications, licensee of Station WFCB, Channel 227B, Chillicothe, Ohio. Secret Communications filed this Petition for Rule Making pursuant to Section 1.420(i) of the Commission's Rules which permits the modification of a station authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest.⁴ *Community of License* requires that any reallocation

¹ *Chillicothe and Ashville, Ohio*, 14 FCC Rcd 18931 (M.M. Bur. 1999).

² North American Broadcasting Co. is the licensee of Stations WMNI(AM), and WBZX(FM), Columbus, Ohio, WLCT Radio Incorporated is the licensee of Stations WCLT(AM) and WCLT-FM, Newark, Ohio, and Franklin Communications, Inc. is the licensee of Stations WVKO(AM) and WSNY(FM), Columbus, Ohio.

³ Both Secret Communications and Franklin Communications filed Motions for Leave to file their respective pleadings. In order to resolve this matter on the basis of a complete record, we will accept and consider these pleadings.

⁴ *See Modification of FM and TV Authorizations to Specify a New Community of License* ("Community of License"), 4 FCC Rcd 4870 (1989), *recon. granted in part* 5 FCC Rcd 7094 (1990).

proposal result in a preferential arrangement of allotments using the FM allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*.⁵ In support of its proposal, Secret Communications states that this reallocation will result in Ashville (with a population of 3,174 persons) having its first local service while Chillicothe (with a population of 21,796 persons) will continue to receive local service from six stations. In their Comments in opposition to the proposed reallocation, the Joint Parties contend that due to the proximity of Ashville to the Columbus, Ohio, this proposal is merely an attempt by Secret Communications to serve the Columbus Urbanized Area at the expense of a smaller community.

3. Station WFCB is licensed as pre-1964 grandfathered short-spaced station that does not meet the current separation requirements now set in Section 73.207 of the Commission's Rules.⁶ Against this fact, Section 73.207(a) specifically prohibits us from accepting petitions to amend the Table of Allotments which do not meet all of the minimum separation requirements. The purpose of this requirement is to assure the technical integrity of the FM service. Strict adherence to the separation requirements also furthers a fair and equitable distribution of radio service by restricting the ability of stations to migrate from relatively underserved areas to areas proximate to urbanized areas. Notwithstanding the fact that a proposal would be creating a new short-spaced allotment in contravention of Section 73.207(b) of the Rules, we have departed from this prohibition under situations not involving a change in transmitter site or class of station.⁷ *Newnan and Peachtree City* involved a station authorized under earlier separation requirements and *Killeen and Cedar Park* involved transmitter site relocations by other stations pursuant to Section 73.215 of the Rules. In both of these situations, the rulemaking proponent complied with applicable separation requirements at the time of its authorization and did not seek any site change in transmitter site in order to effectuate a change in community of license. As such, we determined that these stations, which were in compliance with our Rules when authorized, should be afforded the same opportunity to change their community of license as other stations in conformity with our Rules.

4. In its Supplement, Secret Communications notes that due to unresolved zoning issues regarding its originally proposed site, it filed an application to change the Station WFCB transmitter site.⁸ That application was granted on January 25, 2002. Secret Communications has commenced operation at that site and the covering license application was granted on March 29, 2002.⁹ Accordingly, Secret Communications requests that its reallocation proposal be considered at its existing site. In its Comments on Supplement, Franklin Communications reiterates the previous contention that the reallocation proposal is an attempt to serve the Columbus Urbanized Area. In the event the reallocation proposal is favorably considered, Franklin Communications again requests that the reallocation be permanently conditioned on Station WFCB operating at the currently licensed site.

⁵ 90 FCC 2d 88 (1988). The FM allotment priorities are: (1) First fulltime aural service;; (2) Second fulltime aural service; (3) First local service; and (4) Other public interest matters. Co-equal weight is given to Priorities (2) and (3).

⁶ Station WFCB is short-spaced to co-channel Station WAKW, Cincinnati, Ohio. Both stations were authorized prior to 1964. Section 73.207 of the Rules now requires a minimum separation of 241 kilometers. These stations have remained continuously short-spaced.

⁷ See *Newnan and Peachtree City, Georgia*, 7 FCC Rcd 6307 (M.M. Bur. 1992); *Killeen and Cedar Park, Texas*, 15 FCC Rcd 1945 (M.M. Bur. 2000).

⁸ File No. BMPH-20011120ABH.

⁹ File No. BLH-20020304AFX.

4. We are reallocating Channel 227B from Chillicothe, Ohio, to Ashville, Ohio, and are modifying the Station WFCB license to specify Ashville as its community of license.¹⁰ This will provide Ashville with a first local service while Chillicothe will continue to receive local service from six stations. Because Secret Communications does not propose a change in transmitter site, there will be no loss of service to any population.

5. At this juncture, we will not require Secret Communications to submit a showing pursuant to *Faye and Richard Tuck* to demonstrate that Ashville is independent of the Columbus Urbanized Area and entitled to consideration as a first local service.¹¹ This is because Ashville is not located within the Columbus Urbanized Area and Station WFCB provides only 2.7% of the Urbanized Area with a 70 dBu signal.¹² Similarly, we will not impose a permanent condition prohibiting Station WFCB from relocating its transmitter site. In addition to a station involuntarily losing its transmitter site, there are valid public interest reasons for changing a transmitter site. These reasons could include, as examples, a newly available antenna structure or the need to accommodate another proposal. This rulemaking proceeding is not the appropriate forum to resolve any issue with respect to a site change application that may be filed in the future or speculate that the transmitter site proposed in this proceeding is a “pitstop,” as suggested by the Joint Parties, on the way to proposing a transmitter site near or in Columbus. In the event such an application is filed, an interested party may file an informal objection directed against this application raising any issue it deems appropriate.

6. Accordingly, pursuant to authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission’s Rules, IT IS ORDERED, That effective December 5, 2002, the FM Table of Allotments, Section 73.202(b) of the Commission’s Rules, IS AMENDED, with respect to the communities listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>
Ashville, Ohio	227B
Chillicothe, Ohio	232B1

7. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Secret Communications II, L.L.C. for Station WFCB, Channel 227B, Chillicothe, Ohio, IS MODIFIED, to specify Ashville, Ohio, as its community of license, subject to the following conditions:

- (a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for construction permit (FCC Form 301) specifying the new facility;

¹⁰ The reference coordinates for the Channel 227B allotment at Ashville, Ohio, are 39-35-30 and 83-06-38.

¹¹ 3 FCC Rcd 5374 (1988).

¹² Cf. *Headland, Alabama, and Chattahoochee, Florida*, 10 FCC Rcd 10352 (1995).

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620 of the Commission's Rules;

(c) Nothing contained herein shall be construed to authorize a change in transmitter site or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

8. Pursuant to Sections 1.1104(1)(k) and (2)(k) of the Commission's Rules, any party seeking a change in community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rulemaking fee when filing the application to implement the change in community of license and/or upgrade. As a result of this proceeding, Secret Communications II, L.L.C. is required to submit a rulemaking fee in addition to the fee required for the application to effect the change in its community of license.

9. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

10. For further information concerning this proceeding, contact Robert Hayne, Media Bureau, (202) 418-2177.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief, Audio Division
Media Bureau